THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11819 OF 2005

Dated: 3rd October, 2005.

Between

1. Gottumukkala Sreerama Raju, S/o. Suraparaju,

And 8 others. … Petitioners

And

1. The Executive Engineer (Irrigation & CAD),

Godavari Western Division, Nidadavole,

W.G. District and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11819 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the 1st respondent - Executive Engineer, Irrigation & Command Area Development Department, Godavari Western Division in issuing a Tender Notification and consequential award of contract in favour of the 2nd respondent for removal of pipelines from O & W Canal from Chinakapavaram Lock, Akiveedu Mandal, W.G. District as arbitrary and illegal.

The writ petitioners claim to be the agriculturists possessing lands in Chinakapavaram village, Akiveedu Mandal, W.G. District. It is stated that the said lands are being irrigated from the water drawn from the pipes from O & W Canal. The said pipes though were installed more than 30 years ago, it is claimed that there is no complaint from any quarters. While so, the 1st respondent issued Tender Notification inviting tenders for awarding the contract work relating to the removal of unauthorised pipes installed in O & W Canal from Chinakapavaram lock. In pursuance thereof, the 2nd respondent who was declared as the lowest tenderer was awarded the contract. The petitioner states that consequent to the work awarded in his favour, the 2nd respondent has been taking steps to remove the pipelines in O & W Canal. Aggrieved by the said action, this Writ Petition is filed contending that the question, if any, with regard to the unauthorised pipelines installed from O & W canal shall be decided by the 1st respondent who is the competent authority under the statute. Since the 1st respondent has not decided any such dispute and straightaway issued the Tender Notification for removal of the unauthorised pipelines and also awarded the work in favour of the 2nd respondent , the entire action of the respondents is arbitrary and illegal. It is also alleged that the 1st respondent has chosen to direct removal of the pipelines only from Chinakapavaram Lock, but did not initiate any such steps for removal of the pipelines from Parimalla Lock though the agriculturists adjacent to the said lock are also drawing water from O & W Canal. It is also the case of the petitioners that though they have been drawing the water from the O & W Canal through the pipelines for more than 30 years, there has never been any allegation of unauthorised use of water at any point of time. Hence, the 1st respondent is not justified in initiating the impugned

proceedings without any prior notice and enquiry into the allegation of unauthorised use of water from O & W Canal. Hence, this writ petition.

The 1st respondent filed a counter-affidavit dated 24-8-2005 stating that the lands of the petitioners are irrigable from the water of Old Weyyeru Canal but in fact some extent of the ayacut is the legitimate ayacut of Chinakapavaram channel and the said ayacutdars are taking water from Old Weyyeru Canal by installing unauthorised pipes to the Right Bank of O.W. Canal, high-handedly and causing diminution of water supply to the legitimate ayacut of O.W. Canal. It is also stated that the entire Godavari Delta System is consisting of earthen wear pipes provided to feed the legitimate ayacut as per Delta Monograph and for proper maintenance and equal distribution of water to the registered ayacut and to prevent pilferage of water by means of removing unauthorised pipes, breach irrigation and unauthorised pumping whenever noticed by the Irrigation authorities. While denying the averment of the petitioners that they are drawing water through the canal in question since 30 years without there being any complaint, it is stated that there were complaints from the lower down ayacutdars that due to unauthorised drawal of water the registered ayacut is deprived of water. Hence, the Department has to initiate action for removing the pipes.

It is also stated that the 1st respondent is the competent authority to decide with regard to the question of any unauthorised pipes. However, it is explained that no notice or opportunity is required to be afforded to the persons indulging in illicit drawal of water. It is also stated that the District Collector, West Godavari has specifically insisted to take action for removal of unauthorised pipes and prevention o f pilferage of water in the canals and channels in Godavari Western Division through the concerned Water Users Association and Distributory Committee particularly during the year 2001. The 1st respondent has sanctioned for the work of removal of unauthorised pipes from O.W. Canal in Distributory Committee in Akividu Section limit for Rs.60,000/- vide D.R.No.179 WUA/2001-02. But the President, Distributory Committee, Undi has not come forward to take up the work. Again based on the representation of tail end ayacutdars of Siddapuram and Chinamillipadu (V), the 1st respondent has sanctioned the work of removal of unauthorised pipes from

O.W. Canal for Rs.1,00,000/-; vide D.R.No.193/2004-05 and tender was called for and entrusted the work to Sri K.Umamaheswara Rao, Contractor, Akiveedu vide Work Order No.1105M dated 13-6-2003.

Thus, it is pleaded that the action of the 1st respondent in taking steps to control the pilferage of water from O & W Canal and to prevent irregular irrigation is in accordance with law and unassailable.

It is to be noted that during the pendency of the writ petition, 14 persons claiming themselves to be agriculturists in respect of the land situated in the lower reach of the ayacut got themselves impleaded as respondents 3 to 16 claiming that they are solely dependent on the pipes laid by the Government and that their agricultural operations are adversely affected by the unauthorised pipes laid by the writ petitioners.

Though notice is served, the 2nd respondent did not choose to appear before this Court.

I have heard the learned Counsel for the petitioners and the learned Government Pleader appearing for the 1st respondent as well as the learned Counsel appearing for the respondents 3 to 16.

At the outset, it is to be noted that A.P. Irrigation, Utilisation and Command Area Development Act, 1984 which has been enacted to provide for an accelerated increase in agriculture and allied production in the State of A.P. through a programme of comprehensive and systematic development on scientific and modern lines of command areas, use of lands and water and for proper maintenance and upkeep of Irrigation Systems in the State for ensuring maximum benefits to the cultivators under the Command Areas deals with the Regulation of irrigation and equitable Water Use Management in detail under Chapter-V. Section 19 of the Act provides that the Irrigation Officer shall have power to regulate the supply of water

from an irrigation system upto and below a pipe outlet. Section 20 of the Act which deals with liability of the persons for unlawful use of water or when water runs to waste, to the extent it is relevant for the purpose of case on hand reads as under :

> ***"20. Liability for unlawful use of water or when water runs to waste:-***
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> *(1) If water supplied from an irrigation system is put to unauthorised or unlawful use, the person by whose act or negligence such use has occurred, or if such a persons cannot be identified, the person or all the persons on whose land water has flowed and the land is benefited therefrom, or the person or all the persons chargeable in respect of the water supplied from such irrigation system, shall be liable, severally or jointly as the case may be, for the imposition of such charge as may be levied by the competent authority therefor under the relevant law for the time being in force.*
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> *Explanation:- … … … … … …*
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> *(2) … … … … … … … …*
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> *(3) … … … … … … … …*
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> *(4) … … … .. … … … …*
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> *(5) Any question arising under this section shall be decided by the Irrigation Officer and any person aggrieved by the order of the Irrigation Officer may prefer an appeal to the District Collector within fifteen days from the date of making of the order. A second appeal against an order of the District Collector may be filed before the Commissioner within fifteen days from the date of such order."*

A perusal of the above section shows that in case the water supplied from an irrigation system is put to unauthorised or unlawful use all the persons concerned with such unlawful use as specified in sub-Section (1) are liable for the imposition of the charges as levied by the competent authority. However, any decision of the Irrigation Officer with regard to such question is appealable to the District Collector and a further Appeal is also maintainable before the Commissioner. Though the above provision does not specifically provide for a prior notice to the persons who have allegedly indulged in unauthorised or unlawful use of water, the law is well settled that before taking any punitive action, it is necessary to provide a reasonable opportunity to the person against whom the allegation is made to explain such allegation to be in conformity with the principles of natural justice.

It is also relevant to note that under Section 21 of the Act the Officer Authorised was empowered to stop the supply of water to any land holding in order to prevent the wastage or misuse of water. Hence, though it cannot be disputed that the 1st respondent who is the Irrigation Officer is competent to direct stoppage of water supply on the ground that the water is being misused, before resorting to such action, it is necessary for him to decide the dispute as required under Section 20 of the Act.

In the case on hand, the only plea raised by the respondent No.1 in defence is that the writ petitioners are indulging in unauthorised drawal of water from the canal in question. It is true that under Section 21 of the Act it is open to him to direct stoppage of water on such an allegation, but on a combined reading of Sections 20 and 21, I am of the opinion that the 1st respondent ought to have conducted an enquiry into the allegation of unauthoised use of water after affording the writ petitioners an opportunity to rebut the said allegation. Nothing has been placed before this Court by the 1st respondent to show that such an order was passed under Section 20 (5) of the Act much less to show that the petitioners were afforded an opportunity to rebut the allegation of unauthorised use of water. In the circumstances, I am of the view that the 1st respondent is not justified in straightway inviting tenders for removal of the pipe lines from the canal in question. However, since the contract has already been awarded in favour of the 2nd respondent, I am not inclined to set aside the same at this stage. Instead, I deem it appropriate to direct the 1st respondent to keep the execution of the work awarded in favour of the 2nd respondent in abeyance for a period of eight (8) weeks from today. In the meanwhile, it is open to the writ petitioners to submit their objections / explanation with regard to the allegation of unauthorised use of water from O & W Canal from Chinakapavaram lock. If any such objections are received within two weeks from the date of receipt of this order, the 1st respondent shall consider the same and pass appropriate orders in accordance with law within two weeks thereafter. In case, the objections are found to be untenable, it is open to the 1st respondent to allow the 2nd

respondent to proceed with the work in question.

Accordingly, the Writ Petition is disposed of. No costs.

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3rd October, 2005.

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